



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

ZONING BOARD OF ADJUSTMENT
MINUTES
DECEMBER 2, 2008
(Approved as amended 1/6/09)

PRESENT: Jack Dearborn; Forrest Esenwine; Malcolm Wright, Alternate; Elwood Stagakis, Alternate; Neal Kurk, Alternate; Ian McSweeney, Vice Chairman (arrived at 7:35 PM), Naomi L. Bolton, Land Use Coordinator.

GUESTS: Michael Melcher; Kathi Melcher; Ginger Esenwine; Tom Beal; Renee Beal

I. INTRODUCTION:

In the absence of the Chairman and Vice Chairman, Jack Dearborn was chosen to be the Acting Chairman for this evening. Acting Chairman Dearborn called this meeting to order at 7:30 PM. Acting Chairman Dearborn appointed Neal Kurk, Malcolm Wright and Elwood Stagakis as voting members for tonight's meeting. Ian McSweeney arrived after this action was taken. Acting Chairman Dearborn explained to Mr. McSweeney that he has already set the board members for this evening and he is going to proceed.

II. ADMINISTRATIVE ITEMS:

There were no administrative items for this evening and the board went right to the hearings.

III. PUBLIC HEARINGS:

Case #1008 Chester Colburn
Variance, Article 17.1.1
Applicant is requesting permission to build a single family home.
Tax Map 102-010 Cottage Road (Private Road)

Naomi informed the board and members present that Arthur Siciliano hand delivered a letter to her office late in the afternoon requesting a continuance to January 6, 2009, as they have not finalized the road maintenance agreement with the abutters on Cottage Road. Forrest Esenwine moved to continue Case #1008 to January 6, 2009 as requested; Malcolm Wright seconded the motion. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis)

Case #1308 Michael & Kathi Melcher
Special Exception & Variance, Article 19.1.10
Applicant is requesting permission to reconfigure space in their home to accommodate an in-law apartment. No exterior alterations are necessary.

Michael & Kathi Melcher were present. Forrest Esenwine questioned the completeness of the application due to the fact that he felt there were issues in understanding the floor plan. Mr. Melcher approached the board to explain the floor plan. Acting Chairman Dearborn asked the board members if they were satisfied with the explanation. The board agreed with the explanation that was given.

Kathi Melcher went through the special exception request as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: We would like to reconfigure space “in” our home, 217 Colby Road to accommodate an in-law apartment/suite for “mother-in-law”. No exterior alterations are necessary.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: Exterior will remain the same, no additional driveways; parking, signage, etc. will be required. Will in no way adversely affect the neighborhood or surrounding homes.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: No nuisance, serious hazard, traffic, etc. will result from this change of floor plan within current house, “foot print/frame”.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: Will not result in any burden to the Town or services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: House currently has paved parking for 4 plus cars and a 2 car garage. Much “off street” parking will be available, no curb cuts required.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: House is currently well landscaped and is well off road. No exterior changes will result from this modification to the current floor plan any additional buffers, fences, etc. will be needed.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: Changes to floor plan design are very minimal. (Addition of a small kitchen to the living room area.) This design submitted, will require no structural changes. If future needs change, house can easily be reconfigured to its current design.

Without any questions from the Board, Mrs. Melcher proceeded to the variance request and addressed the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: This is a re-configuration and use of space within the current house structure, to accommodate the changing needs of family within household and aging parent. Properties on this road range from 500 +/- SF to 3,000 + SF. Single family, duplex homes, farms, home business properties, commercial parking for Cold Springs RV lot, etc. This accessory apartment will in NO way adversely affect the surrounding properties or their value.

2. That the granting of the variance will not be contrary to the public interest because: We are not adding to the current structure. We are not altering anything that will affect the surrounding homes, Town or neighborhood. No hazards to private homes, public roadways, etc. will result from this variance of area as per 19.1.10.1.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: This design is the least obtrusive; requires the least accommodations to existing floor plan. No exterior structural changes needed. We are not adding space to the house; therefore cannot strictly adhere to the 650 SF maximum design. We are using existing space and it is slightly over 650 SF maximum. First floor space is required.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: First floor accommodations required in accessory apartment. We do not want to add additional rooms, baths, etc. to home nor could we afford to do so for this purpose. House already had more SF and baths than we currently use. The use of existing space is far more practical, economical and least obtrusive to current house design.
4. That through the granting of relief by variance substantial justice will be done because: Accessory apartment needs to be easy access and all on one level; and will not detract from the current aesthetic value of home design. There is no easy way to convert or add accessory apartment if we cannot use this design. It would not make sense to add an apartment of exactly 650 SF or less to the existing structure where we have the space within the current design and footprint.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The accessory apartment will be clearly incidental to the primary use of the house and will in no way adversely affect the values of surrounding homes or create any nuisance in the neighborhood. The additional space used is only used for “ease of” and “best use of” current home floor plan; not to purposely exceed the 650 SF criteria. Thank you for your understanding and consideration.

Acting Chairman Dearborn closed the public portion of the meeting at 8:20 PM.

DISCUSSION:

Forrest Esenwine asked Mr. Melcher if he could show him on the drawing where the front door and the chimney were in relation to the hand drawn sketch. Mr. Melcher explained the floor plan. Neal Kurk then asked why they were here. The explanation that has been used by the code enforcement officer is that the 2nd kitchen constitutes an in-law apartment and that is why he applied for the special exception, but the variance is needed because the existing house exceeds the 650 SF maximum by 26 SF.

CASE DECISIONS: Point #1: Forrest Esenwine moved to accept point #1; Elwood Stagakis seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis). Point #2: Forrest Esenwine moved to accept point #2; Elwood Stagakis seconded the motion. Discussion: none. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis). Point #3aa: Forrest Esenwine moved to accept point #3aa; Malcolm Wright seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis). Point #3bb: Forrest Esenwine moved to accept point #3bb; Malcolm Wright seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis). Point #4: Forrest Esenwine moved to accept point #4; Malcolm Wright seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis). Point #5: Forrest Esenwine moved to accept point #5; Elwood Stagakis seconded the motion. Discussion: None. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis).

Forrest Esenwine moved to grant the variance for case #1308 with the condition that the accessory apartment is not to exceed 676 SF and the adjoining room is to be kept unlocked for free passage; Neal Kurk seconded the motion. Discussion: Elwood Stagakis wanted to add a restriction of the apartment usage to be restricted for a use of a relative of the owner of the property only. Mr. Esenwine stated that he would amend his motion to include this added condition. Mr. Kurk seconded Mr. Esenwine's amended motion. Vote: 4 in favor (Wright; Dearborn; Esenwine and Stagakis) and 1 opposed (Kurk). The variance passes. Mr. Kurk stated that he wanted the record to show that the reason he is opposed to that is strictly to the addition of the amended restriction and not the request for the apartment itself.

Neal Kurk then moved to grant the special exception for case #1308 to allow the use of the 676 SF of the first floor of the existing house as granted by the previous variance; Elwood Stagakis seconded the motion. Vote: 5 in favor (Kurk; Wright; Dearborn; Esenwine and Stagakis).

IV: OTHER BUSINESS:

NOVEMBER 4, 2008 MINUTES: Forrest Esenwine stated that he would like to take up these minutes at the January 6, 2009 meeting because he has not had time to finish reading them. The board agreed and these will be done at the January meeting.

CASE #0408-REQUEST FOR REHEARING – JAMES & JEANNE STAPLETON: The board received a request for rehearing for James & Jeanne Stapleton from their attorney. Acting Chairman Dearborn stated that board needs to decide if the requested information warrants reasons for rehearing. Elwood Stagakis stated that there is a lot of information from an attorney but he didn't feel there was any "new" information. Forrest Esenwine stated that he knows what the attorney is claiming under #3. Acting Chairman Dearborn asked if there was a due process issue or is there a cloud on the process which the board used. Acting Chairman Dearborn stated that if we have a due process issue he felt that the Town should try to attempt the clean up the Town's record. The consensus of the board is that it admits there is a cloud and should grant the rehearing. Forrest Esenwine moved to grant the rehearing regarding Case #0408 for the purpose of rehearing point #2

of the original variance request; Malcolm Wright seconded the motion. Discussion: Neal Kurk stated that he can't support the motion for two reasons: (1) he didn't think we could limit the rehearing to one specific item; and (2) he doesn't see there is a process problem with what we did and because there is no "new" information he doesn't see any reason for the rehearing. Mr. Stagakis stated that he can't support the motion and he feels the board should rehear the case completely. Forrest Esenwine then withdrew his motion. Malcolm Wright withdrew his second to Mr. Esenwine's motion. Elwood Stagakis moved to grant the rehearing on Case #0408; Malcolm Wright seconded the motion. Vote: 3 in favor (Wright; Dearborn and Stagakis) and 2 opposed (Kurk and Esenwine). Therefore the motion passes and the case will be reheard completely.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 9:15 PM; Neal Kurk seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator